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No. 71-881

In the Supreme Court of the United States

OCTOBER TERM, 1971

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

HOWARD C. HUDSON,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

MEMORANDUM FOR HOWARD C. HUDSON, RESPONDENT IN OPPOSITION

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In the
Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-831

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

HOWARD C. HUDSON,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

MEMORANDUM FOR HOWARD C. HUDSON, RESPONDENT IN OPPOSITION.

The petition filed herein by the State of Illinois should not be granted because of a lack of federal jurisdiction. The Supreme Court of Illinois grounded its decision on its

interpretation of the Constitution of the State of Illinois, to wit: Article IV, Section 22 of the Constitution of 1870, even though it relied also on the equal protection clause of the United States Constitution.

> "In such circumstances, even though a state court's opinion relies on similar provisions in both the State and Federal Constitutions, the state constitutional provision has been held to provide independent and adequate ground of decision depriving this Court of jurisdiction to review the state judgment." *Jankovich v. Indiana Toll Road Comm.*, 379 U.S. 487, 491-2 (1965).

In *Fox Film Corp.* v. *Muller*, 396 U.S. 207 (1935) involving a similar question, a like result was reached:

> ". . . the case is controlled by the settled law that where the judgment of a state court rests upon two grounds, one of which is federal and the other non-federal in character, our jurisdiction fails if the non-federal ground is independent of the federal ground and adequate to support the judgment."

The Illinois opinion is clear. It invalidated a conviction grounded on the improper classification of marijuana as a narcotic. The Illinois court stated, (Petn. A. 27):

> Against the entire background of the drugs considered we judge that the classification of marijuana under the Narcotics Drug Act rather than under the Drug Abuse Control Act has been arbitrary. A comparison of the drugs leads to a conclusion that marijuana more closely resembles drugs placed in the Drug Abuse Control Act. It is, comparatively speaking, dissimilar from drugs under the Narcotic Drugs Act. We do not find a rational basis for the classification, a consequence of which is that one first convicted of the sale of marijuana must without qualification receive a sentence ten times greater than one permitted to be imposed on one convicted for the first time of a

> sale of drugs under the Drug Abuse Act. The absence of a rational basis for distinguishing first convictions for sales of marijuana from first convictions for sales of drugs placed in the Drug Abuse Control Act compels the conclusion that the present classification of marijuana . . . was in violation of section 22 of article IV of the former constitution of this State.

Thus, it is clear, in simple and unequivocal language—that one of the basis for the decision was grounded on the Illinois legislature's unreasonable classification of marijuana as a narcotic in violation of the Illinois constitution.

The concept is not new in Illinois. Section 22 of Arteile IV of the Illinois Constitution has heretofore been interpreted by the Illinois court in *People* v. *Dale*, 406 Ill. 238, 92 N.E.2d 761 (1950). The court stated, (92 N.E.2d 765):

> "There is no doubt but that an unreasonable classification would contravene section 22 of article IV of the Illinois constitution."

The Illinois court ruled in 1934 that Section 22 of Article IV of the Illinois Constitution supplemented the equal protection provision of the 14th Amendment prohibiting statutory enactments of arbitrary classification. *Michigan Millers' Mutual Fire Insurance Co.* v. *McDonough*, 358 Ill. 575, 193 N.E. 662 at 666.

It is obvious, from the presentation of the State's petition, that they are seeking a review of *People* v. *McCabe* (Petn. App. C), and not merely a review of the reversal in *People* v. *Hudson*, because *Hudson* was reversed solely and only upon the holding in *McCabe*. (Petn., App. A).

The State's petition should be denied because it is asking this court to interfere with the State's interpretation

of its own laws and constitution which the "adequate state ground" doctrine was designed to prevent.

It is therefore respectfully submitted the petition for writ of certiorari should be denied.

Respectfully submitted,

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